



8th JUDICIAL DISTRICT RESTRICTION OF SERVICES PROTOCOL
FISCAL YEAR 2015
HERMAN A. CASTETE
DISTRICT DEFENDER

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Introduction to the 8th Judicial District

The 8th Judicial District is comprised of the parish of Winn. This parish has a population of approximately 16,000 according to the 2010 census and is considered to be rural.

Herman Castete began serving as Chief Public Defender in 1999 and has served in that capacity to date. At that time he served as the only public defender, operating out of his private office with no cost of operation passed on to the Indigent Defender Board. Funding paid his salary and all other office expenses were covered by Mr. Castete personally. Over the last few years funding was increased by the State and we staffed our office accordingly. For the first time our district had adequate funding and was able to offer truly adequate services to our clients. Never before had the 8th Judicial District had means to staff an office, pay rent and offer investigatory work so desperately needed by our clients.

Prior to 2007 the office was granted funds to upgrade and hire the personnel that were required to provide a viable defense to our clients. At the beginning of 2007 the office began increasing the staff which by 2008 was composed of 3 lawyers, including a conflict counsel, a full time investigator, a part-time investigator, 2 part-time secretaries, and an unpaid assistant.

In Winn Parish no funds are received except for the DAF, CINC, limited court cost, application fees and attorney reimbursement fees when a client is placed on probation. Without continued DAF funding the office cannot continue to serve indigent defendants in the 8th Judicial District. The reduction of DAF will require a totally different manner of operation. Due to a shortage of funding in 2012, after consultation with the Baton Rouge Office, the full time investigator was reduced to part time to order to allow the office to restore the insurance required by the State Contract.

Since 2007 this office has been basically a full time operation with staff to handle all the requirements of a full time operation. However, with the anticipated reduction in funding the office will no longer be able to accommodate our clients and provide the service that they have been receiving and should expect to receive.

In Winn Parish, the public defender's office does not enjoy free office space, utilities, telephone, internet services or any other infrastructure support. Therefore, we must pay rent, utilities, telephone, internet, water, and office maintenance. These items appear in the budget and the amounts are relatively cheap when compared with other areas in Louisiana.

Prior to 2006, the Public Defender's Office for the 8th Judicial District did not have an office, telephones, or any furniture or fixtures whatsoever. To date the only items paid for by the Public Defender's Office have been equipment purchases, filing cabinets and a few chairs. All other office furniture and fixtures are the property of Herman Castete. No district funds have been depleted in order to adequately furnish our office.

Prior to 2007, the public defender's organization consisted of two attorneys. Each attorney was responsible for maintaining their own files, meeting with clients, filing discovery, attending status conferences, obtaining plea offers, and preparing for trial for those who did not wish to avail themselves of plea offers. Clients would usually meet their attorney at court or come by Mr. Castete's private office. The attorneys had no access to funds for private investigators even for cases which could result in a sentence of life without parole. The caseloads were very high and the compensation was very low. The local board, prior to 2007 would basically save the funds received from court cost and only pay a small, minimal amount for defense attorneys.

In 2008, the staff was expanded to accommodate our client list so that defendants could have more services of greater quality. The number of attorneys increased to three, including the district defender, who maintains a full caseload. In addition, we acquired a support staff of two part-time secretaries. Licensed private investigators were hired and other services were instituted to enhance the work of public defender's office. Research materials, code books and other publications, as well as funding for training seminars were available for the first time to attorneys and investigators at no cost to them personally. Previously, public defenders had purchased their own criminal code book or would borrow those books from the judge or even the assistant district attorneys.

Overall public defense in the 8th Judicial District has been transformed since 2008. A professional, accessible office was created to accommodate the needs of our parish, and included a helpful, supportive staff and attorneys who fight for the rights of the accused and have the proper tools to do so. I am proud to say that we win more cases than we lose. This includes misdemeanors and felonies. This office has come very far in a short period of time. People who do not qualify for our services are always trying to hire the public defenders for their private representation. This indicates the confidence level the public has for the members of this office. The attorneys and staff take great pride in being an organization that is respected by our clients, the judge, the district attorney and his staff, as well as the community. We are respected because our goal is always to protect a person's constitutional rights and that is a mandate that no U.S. citizen can disagree with.

Even though we have transformed this district, it is still a rural office and does not have the same amenities as the urban offices. For example, we do not have social workers to help our clients, nor do we have the full staff that many offices in large areas enjoy. Social services are practically non-existent. Unfortunately, we do not have a drug court which would help many of our clients.

Without the proper funding we need to maintain our office at its present level, we will revert to our former situation of being unable to provide competent representation because we will no longer have the attorneys, support staff, research materials, training, etc. available.

Funding History

As stated in the introduction, the funding received by our office is comprised primarily of State DAF. Local funding makes up a small part of our budget. We receive approximately \$3,000 per month in court costs. The \$40 Application Fee and Attorney Reimbursement Fee bring in approximately \$1,500 per month. This has been fairly consistent since I have been the public defender. The District Attorney does do some pretrial intervention and it has been fairly consistent during his tenure. We did not benefit from the court cost increase; the total received has remained approximately the same. The biggest factor affecting the receipts has been the economy. Every court session results in a great number of bench warrants for people failing to appear. Even the ones who do appear do not have money to pay the fines and are granted extended payment options.

Prior to 2007, the district acquired funds strictly from court cost, bond fees, and a few orders to pay attorney fees. Following the creation of the State Public Defender's Office under Act 507, each district was given funds and the 8th received a little more than \$200,000 in 2008 and began the staffing and services increase. From 2010 through 2012, local revenues received by the office remained substantially the same and DAF Funding assured services were uninterrupted and were able to be offered on a level deserved by our clients.

DAF revenues have decreased for the last two years. The amount we are now receiving is insufficient to maintain our office. As such we are now forced to institute a limited amount of service restrictions and institute a substantial reduction of components use to facilitate the defense of our clients. The restriction of services outlines the services we can no longer offer due to budget restraints. The reduction in facilitation components includes various items that remain in the budget but will no longer be fully funded which render many of those items inadequate and ineffective.

As is shown, without the State Funding this office would quickly revert to a pre-2005 model of one part-time defender with no staff.

Efforts to Increase Funding

Over the past few years, I have spoken with the Sheriff and the District Attorney in an effort to increase ticket writing to generate more revenue. Encouraging the police to go after people who may become our future clients is inappropriate in my opinion. However, our drastic situation calls for drastic measures and we cannot rely on the state legislature to come to our aid. Each person I spoke with acknowledged our plight but has little desire to assist us.

The local police jury has funding issues of it's own and cannot assist with our fiscal shortfalls. They would only help if the legislature required them to contribute to our funding as they do for the district attorney.

We have asked our judge to increase the amount of attorney fees ordered for our clients to pay. The judge has certainly been willing to help us in any way possible. He is aware of the work we do and desires for us to maintain the quality of services that our clients now receive. As such, he does what he can, but many of our clients never pay because their probation gets revoked. Payment of these fees is also difficult for our clients because they are indigent.

Our judge also assists with our \$40 application fee by informing our clients that they must pay the fee. The fee, if not paid at the beginning our representation, is added to the client's probationary fees if they are probated. However, if they are revoked, then we do not see this fee either.

As previously stated, any cut in revenue by the State will deplete our funds and result in a restriction of services.

The United States Constitution and the Louisiana Constitution guarantee competent legal representation for indigent people who are accused of a crime. Since, 2008 we have provided those services with the upmost proficiency. Unfortunately a lack of proper funding and resources has forced this office to take drastic measures which may constitute a constitutional crisis for our clients. We must restrict certain services immediately and those restricted services may increase with time if proper funding is not granted to this district.

Protected Work Product

This Restrictions of Services Statement is a protected work product of the Public Defenders' Office for the 8th Judicial District of Louisiana. This office asserts its privilege of work product under Louisiana and federal law in protecting this statement and all materials contained herein. The information herein is intended to be for the use of the individual or entity named above. If you are not the intended recipient be aware that any disclosure, copying, distribution or use of the contents of this Statement is prohibited. If you have received this statement in error, please notify this office (318) 628-3592 or by facsimile at (318) 628-5080.

Restriction of Services Statement

The 8th Judicial District Public Defender Office for the Parish of Winn provides legal representation guaranteed by the United States and Louisiana Constitution to clients in more than 900 cases each year who are indigent and unable to seek private counsel. Despite the diligent efforts of the Public Defenders Office to reduce expenditures and increase revenues, the Public Defenders Office has been unable to secure the resources necessary to provide competent legal representation for all of its clients and must begin service restriction. Service restrictions caused by insufficient funding may create a constitutional crisis for indigent defendants, who are guaranteed equal access to justice, and may have practical consequences for the efficient administration of criminal justice and for the public safety of the Winn Parish community.

Overview of Service Restrictions

Our operating budget for 2014-2015, while less than we required, should allow us to complete the fiscal year. However, with the anticipated 2016 DAF reduction it is imperative that I start now to reduce services in order to have any chance of being able to keep the office open at all.

As to the remaining sources of income, the amount budgeted for court cost has fallen short of initial projections. Unfortunately, the reductions were much greater than we anticipated.

Faced with this fiscal crisis, the 8th Judicial District Public Defenders Office has no choice but to restrict the delivery of service currently provided to the Winn Parish community in an effort to reduce expenditures. The Restriction of Services (ROS) plan eliminates two support staff positions and one contract attorney position. Elimination of the contract attorney position will render the District Defender as the only public defense attorney in the Parish of Winn. Therefore, effective April 15, 2015, the district will be forced to implement a waitlist. Transfer cases as well as the most serious or complex felony cases will receive priority in determining representation. The remaining cases, if not handled by the private bar will be placed on a waiting list. With the assistance of the Louisiana Public Defender Board staff, I will monitor my caseload to ensure that my caseload remains manageable for the effective assistance of counsel. These measures will result in a savings of approximately \$8,800.00 through the end of FY15.

To compensate for such deficiencies, many items in the budget had to be re-addressed and reduced accordingly.

The following budget reductions will be required:

1. Effective April 1, 2015, the contract attorney will stop accepting new cases. The attorney will remain on staff until July 1, 2015 to be given an opportunity to complete all

pending cases. However, effective May 1, 2015 the attorney's wages will be reduced by \$1,000 per month.

2. Lay-off one part-time investigator effective May 1, 2015.
3. Discontinue West Law services.
4. Lay-off one part-time secretary effective June 1, 2015.

Budget Cuts for the Remainder of the 2015 Budget

It is imperative that the budget be reduced for our office to stay open. Below is an outline of the savings for the remainder of the year provided that the reductions take effect immediately:

1.	West Law Effective February, 2015	\$ 1,500.00
2.	Reduction of contract attorney's wages Effective May 1, 2015	\$ 2,000.00
3.	Terminate part-time investigator Effective May 1, 2015	\$ 3,400.00
4.	Terminate part-time secretary Effective June 1, 2015	\$ 1,500.00
5.	Payroll Tax	<u>\$ 400.00</u>

Total FY15 Savings\$ 8,800.00

Projected FY15 Deficit.....\$ 0.00

All these reductions will not allow the office to remain open. As shown on the income and expense sheet for 2016 attached hereto, the office will be completely out of funds by November or December of 2015.

Staff Reductions

Reduction of attorneys should not be a viable option. However, it will be necessary in the 2016 fiscal year. Based on FY16 projections it may be impossible for the Public Defenders Office to remain open. Elimination of the second attorney will mean that no misdemeanor or conflict cases can be handled by this office and no Child in Need of Care parent representation beyond the statutory dedication received by this office can be handled. The Chief Defender who currently carries a full felony load, is prevented by the Rules of Professional Conduct from maintaining a caseload in excess of that which would allow him to provide ethical representation to each and every client. A greater caseload means that each attorney can spend less time with each client and therefore may not be able to give a particular case the attention it requires.

As shown by the data attached hereto, I personally handled 245 felony cases in 2014. The other attorney handled 104 felony cases. Many of these were conflicts, however probably one-third was to relieve me of being totally overwhelmed with cases. Therefore the loss of the second attorney will likely result in the Chief Defender handling only cases in which the client is incarcerated. Without an increase in local revenues it is possible that monthly revenues might be insufficient to allow the office to pay basic infrastructure expenditures such as rent, utilities, insurance and salaries. At some point in December of 2015 or early 2016, the office may be forced to completely shut down, in direct violation of the citizens of Winn Parish's 6th Amendment Right to Counsel.

For the time being, the office will be manned five days per week in that the remaining part-time investigator and part-time secretary will answer the telephone, give out court dates, answer the door, and go to the jail to handle interviews and anything else which may occur in day to day operations. Not having adequate clerical assistance will result in difficulties for our clients; they may not be able to get bond reductions timely, find out their court dates, or discuss any other issues they may have. The secretary will not be here to address the "drop-ins" or update the database.

Clearly staff reductions will have an impact on the quality of services we are able to provide our clients. This will result in their frustration and the frustration of the remainder of the staff.

Case Load Restrictions

The average case load for a contract attorney who represents clients in the 8th Judicial District PDO is 2.55 times the maximum case load limit for defense attorneys. Therefore a wait list must be established for new clients. The clients who are transfer eligible, who are accused of committing the most serious crimes, as well as clients who are incarcerated will be prioritized by the Public Defenders Office. In cases of similar posture and severity, juvenile delinquency cases will receive preference over criminal cases. We define "serious crimes" as all sex crimes requiring registration, all crimes with high mandatory minimums without benefits, and crimes

with very high sentencing ceilings. In making a determination of case seriousness or complexity, we equally consider the statute on its face, how the statute is prosecuted in this jurisdiction and the difficulty of presenting a defense. We are mindful that there are instances when charges are superseded, amended or added by the State and we will monitor the wait list closely to address such events. The office will seek continuances on the cases of all clients placed on the wait list.

Notifying Clients:

The PDO will attempt to contact all clients or referred individuals within five business days to inform the individual(s) of their status concerning the acceptance of their case, the declining of representation under the restriction of services plan, or placement on a waiting list under the restriction of services plan.

Notifying Courts:

The District Defender will compose letters to the affected courts once the Restriction of Services Plan is approved. The District Defender will meet with the affected judges to answer any questions.

Assignment of New Cases:

All new cases will be placed on a wait list and will be reviewed and placed in order of date received and seriousness of offense. If the private bar is assigned to represent clients in criminal cases, the Public Defenders Office will work with the newly assigned attorney to ensure that a "Notice of Enrollment" in the matter is filed within five days of assignment and a meeting with the District Defender will be scheduled as soon as possible to determine what, if any, motions should be filed in the case.

Maintenance of Wait List:

The staff of the 8th Judicial District Public Defenders Office will maintain the wait list, and will compose a standard notice to be given to individuals on the wait list and its impact on their case, laying out the wait list protocol and giving contact information to individuals to maintain contact with the Public Defenders Office. The priority status will be defined and published as well.

Data Management:

As with all cases, when we are assigned the case initially by the court, we open a file immediately which will remain open in our system unless the case is handled by private counsel. However, since our state funding is calculated based on caseload, the Louisiana Public Defender Board (LPDB) will designate these cases under a separate status so that future funding is not negatively impacted.

Communication

The District Defender will be the media point person within the PDO. The point person for the 8th Judicial District Court is Judge Jacque Derr. There is no local bar association in Winn Parish. Herman Castete can be reached at our office phone number and address, or by email at district8@publicdefenders.la.gov.

For purpose of press releases the PDO will be primarily responsible. All press releases will be provided to the LPDB for review and comment prior to release.

Quality Assessment

We will work with our I.T. support to create a means to provide monthly reports to assist the office in determining the impact of the Restriction of Services Plan on our delivery services and upon our clients. In particular we will track the following:

- Attorney caseload
- Average length of time on the wait list by case seriousness
- Case outcome data
- Client date of birth
- Client custody status
- Transfer eligible youth

Ramifications of Budget Cuts

Staff reductions were discussed above. All of the other cutbacks will also have a dramatic effect upon the legal services provided to our clients.

Westlaw research and books are being reduced in an effort to save money. Of course, this prohibits the attorneys from having access to all the material necessary to be effective in representation.

We will no longer be able to hire conflict attorneys. So, if we have co-defendants, we will be unable to represent any defendant after the first. We will be informing the judge of this situation in the hopes that he may be able to locate attorneys to work on a pro bono basis. In this district, all attorneys with criminal experience work for the district attorney or the public defender. The defendants who cannot be represented by the PDO due to a lack of funds to pay for conflict counsel will not have the benefit of a criminal attorney. There is simply no money available for any conflict counsel.

Investigators are essential to criminal defense. They locate the witnesses and get the statements from people who are indispensable to a case. We will no longer be able to afford a full time or part-time investigator due to the fact that we did not receive adequate state funding. This takes time away from our clients and now that we have greater numbers of clients due to a reduction in force, it is virtually impossible to find the time to adequately investigate the cases. In addition, we are not trained, licensed investigators. People facing the most serious crimes cannot get adequate representation because there are no investigators to flush out their witnesses, get statements from witnesses, review the crime scene, and talk to those eyewitnesses that the police never interviewed. There is simply no money available for any investigative work whatsoever.

Expert witnesses are not necessary in the majority of our cases but we will have no money whatsoever to hire an expert. Our clients will not have the benefit of professionals who can determine DNA, fingerprints, handwriting analysis, injuries, etc. Defendants in the 8th Judicial District will be greatly disadvantaged by not being able to employ professionals who have expertise in their respective fields. The District Attorney is fully funded for his experts, but a defendant cannot have the same ability if they are poor and without personal resources.

Efforts to Remediate the Restriction of Services Plan

Since the earliest projections of an anticipated restriction of services, the PDO has made various efforts to remediate the ROS plan. The PDO has cut cost to the bare bone. There are no other options but to go into ROS of services and to provide services to those clients that we can. The 8th Judicial District is located in a rural community, there are no other options or avenues to pursue.

Litigation

We have considered the possibility of litigation due to our restriction of services. As District Defender, I have closely adhered to the terms of each attorney's contract and modified all contracts with appropriate notice. All attorneys and support staff were personally informed of the decision to terminate the attorney's contract and great pains were taken to be sure that all attorneys were aware of the process. It should be noted that it was with considerable difficulty that the attorneys' contracts will be modified but modifications are necessary at this time for the long-term viability of the 8th Judicial District PDO.

Conclusion

Representation of indigent defendants in the 8th Judicial District has been very comprehensive, detailed, and focused on adherence to all requirements set out in the United States Constitution

and the Louisiana Constitution. In most cases, our work exceeded the minimum threshold deemed to be allowable. We took pride in our work and were well respected by the local judiciary for doing our jobs well even though we have been forced to operate on a “shoestring” budget.

The voluntary assistant will continue to do all administrative duties like bookkeeping, payroll, quarterly reports to the IRS and Department of Revenue, pay payroll tax, draft W-2's and 1099's as well as payment of all bills. The administrative duties also include monthly reports for the State Public Defender as well as budgets, timekeeping, etc.

Our judge will determine who will handle conflict cases since that will be one of our restrictions of services. If a particular case needs an expert, we will attempt to continue the matter until next year with hope that we will be able to fund that particular professional. We will handle the lack of experts on a case by case basis.

In essence, we had very little resources to work with initially and now we have even less means to do the mere basics of defense.

I will continue to closely monitor the situation to determine if we are in keeping with all legislative mandates. If case numbers become too great, then we will be forced to take additional measures.

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8TH JUDICIAL DISTRICT

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**FISCAL YEAR 2016
PROJECTED REVENUES & EXPENDITURES**

INCOME:

DAF	\$ 58,000.00
Court Cost & Bond Fees	40,000.00
Attorney Reimbursement & Application Fees	<u>24,000.00</u>
	\$122,000.00

EXPENDITURES:

District Defender	\$ 84,000.00
Secretary (1 part time)	18,000.00
Investigator (1 part time)	20,400.00
Payroll Taxes	3,000.00
Rent	7,200.00
Utilities	3,600.00
Internet	3,000.00
Telephone	2,500.00
Insurance	7,000.00
Auditor	2,900.00
Cleaning/Maintenance	2,600.00
Copier Lease	1,700.00
Office Supplies	2,500.00
Law Books	<u>1,500.00</u>
	\$159,900.00